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FM AMEMBASSY MANILA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 6064
INFO RUEHNH/AMCONSUL NAHA IMMEDIATE 0091
RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE
RUEKJCS/SECDEF WASHDC IMMEDIATE

UNCLAS MANILA 001174

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E.O. 12958: N/A

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SUBJECT: APPEAL OF LANCE CORPORAL SMITH

REF: MANILA 1098

¶1. (U) The Court of Appeals has "directed" LCpl Daniel Smith to submit his "appellant's brief" on the actual appeal of his criminal conviction within fifteen days. Beginning from the date of receipt by the defense counsel on April 4, this would make the brief due on April 19. At the same time, the Appeals Court dismissed an "Omnibus Motion for the Dismissal of the Appeal and the Issuance of a Warrant of Arrest" (reftel) in the case.

¶2. (SBU) Senior defense counsel Jose Justiniano told Pol/C that he had on April 13 filed a request for a 30 day extension, which he said the court would grant "automatically." He nonetheless said that he planned to file the brief during the week of May 1 rather than waiting for the new expected May 19 deadline. He expressed high confidence that he would have sufficient time to prepare the brief. He indicated that Court of Appeals Justice Rosario had not strictly followed the 2002 criminal procedures, which mandated that the court formally notify the defense attorney that it had finished its review of the lower court's records, but added that he did not intend to make an issue of this for fear of antagonizing the court.

¶3. (SBU) Comment: The appeal is now moving into its next phase, with the clock ticking. Once the defense files its brief, the Office of the Solicitor General will also have thirty days to file its brief, with possible extensions as well (although the Solicitor General separately told Pol/C that she does not intend to make such requests). While the justice's ruling on the omnibus motion received some limited media attention, there has been no publicity that the appeal process is now moving forward after a long silence.

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